

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, )  
5 )  
6 PETITIONER, )  
7 VS ) CASE NO. 5:10-HC-2124-BO  
8 PETER M. EBEL, )  
9 RESPONDENT. )

10  
11  
12  
13 STATUS CONFERENCE

14 JANUARY 7, 2011

15 HONORABLE TERRENCE W. BOYLE, PRESIDING  
16

17 APPEARANCES:

18 MR. R. A. RENFER, JR.  
19 ASSISTANT UNITED STATES ATTORNEY  
20 310 NEW BERN AVENUE  
21 RALEIGH, NC 27601  
(FOR THE GOVERNMENT)

22 MR. EDWARD D. GRAY  
23 ASSISTANT UNITED STATES ATTORNEY  
24 310 NEW BERN AVENUE  
25 RALEIGH, NC 27601  
(FOR THE GOVERNMENT)

1 APPEARANCES: (CONT.)

2 MR. THOMAS P. MCNAMARA  
3 FEDERAL PUBLIC DEFENDER  
4 150 FAYETTEVILLE STREET  
5 SUITE 450  
6 RALEIGH, NC 27601  
7 (FOR THE RESPONDENT)  
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25 SHARON K. KROEGER, COURT REPORTER  
MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1 THE COURT: MR. EBEL. I KNOW IT WILL BE  
2 INTERESTING WHEN WE GET TO THE SIGNS AND I HOPE IT WON'T  
3 BE TOO LONG BEFORE WE DO THAT BECAUSE THERE ARE DIFFERENT  
4 DOMAINS, LIKE THE LAST PERSON IS A -- I MEAN HIS  
5 HISTORICAL PICTURE IS HETEROSEXUAL RAPE, ATTACK AND RAPE.

6 THIS PERSON HAS A COMPLETELY DIFFERENT  
7 BACKGROUND AND IT WILL BE INTERESTING TO SEE IF THE  
8 SCIENCE, THE PSYCHOLOGISTS SAY THAT ALL OF THESE TYPES OF  
9 ABERRANT BEHAVIOR LEAD TO THE SAME MENTAL ILLNESS OR IF  
10 THE MENTAL ILLNESSES ARE DIFFERENT BASED ON WHAT YOUR  
11 CRIME OF CHOICE OR DEVIATION OF CHOICE IS.

12 MR. RENFER: I THINK -- I AM NOT AN EXPERT IN  
13 THIS AT THIS POINT AT ALL, BUT I THINK YOU WILL FIND THAT  
14 THEY LEAD TO DIFFERENT DIAGNOSES AT VARIOUS -- WITH  
15 VARIOUS TYPES OF PERSONALITIES, AND SO IT'S FAIRLY  
16 COMPLEX.

17 THE COURT: AND DIFFERENT PROGNOSIS ABOUT  
18 RECOVERY OR REHABILITATION.

19 MR. RENFER: I DON'T -- I CAN'T RESPOND TO  
20 THAT.

21 THE COURT: BUT THAT MAY WELL BE THE CASE?

22 MR. RENFER: IT COULD BE. I JUST DON'T KNOW  
23 THAT, YOUR HONOR.

24 THE COURT: OKAY. THIS IS MR. PETER EBEL. IS  
25 IT EBEL OR EBEL?

1 MR. MCNAMARA: IT'S EBEL, YOUR HONOR, PETER  
2 EBEL.

3 THE COURT: WHERE ARE YOU FROM?

4 THE RESPONDENT: I LIVE OVERSEAS. MY LAST  
5 ADDRESS WAS IN ALBANIA, SIR, WHERE I WAS WORKING.

6 THE COURT: WHERE WERE YOU FROM IN AMERICA?

7 THE RESPONDENT: I WAS BORN IN NEW JERSEY,  
8 RAISED IN WESTCHESTER, SIR, UPSTATE NEW YORK.

9 THE COURT: AND GREW UP THERE?

10 THE RESPONDENT: UNTIL I WAS 15, YES, SIR.

11 THE COURT: AND YOU WERE SENTENCED TO A 120  
12 MONTHS SENTENCE AND THAT IS THE SENTENCE THAT YOU DID?

13 THE RESPONDENT: CORRECT, SIR.

14 THE COURT: WHERE DID THAT ARISE?

15 THE RESPONDENT: WHERE?

16 THE COURT: WHERE WERE YOU SENTENCED TO THAT?

17 THE RESPONDENT: AT LOS ANGELES, SIR.

18 THE COURT: IN CALIFORNIA?

19 THE RESPONDENT: YES, SIR.

20 THE COURT: IN CENTRAL CALIFORNIA?

21 THE RESPONDENT: YES, SIR.

22 THE COURT: CENTRAL DISTRICT?

23 THE RESPONDENT: I BELIEVE SO.

24 THE COURT: AND THAT WAS IN 2000 OR --

25 THE RESPONDENT: WELL, I WAS ARRESTED THE WEEK

1 AFTER SEPTEMBER 11, SEPTEMBER 11, 2001. I WAS DETAINED  
2 ON A CUSTOMS HOLD AT LOS ANGELES INTERNATIONAL AIRPORT.

3 THE COURT: AND WERE YOU LIVING IN CALIFORNIA  
4 OR LIVING SOMEWHERE ELSE?

5 THE RESPONDENT: NO. I WAS BRINGING THREE  
6 CHILDREN IN FOR MEDICAL TREATMENT AT UCLA.

7 THE COURT: FROM ALBANIA?

8 THE RESPONDENT: YES, SIR.

9 THE COURT: AND SO YOU WERE INDICTED AND PLED  
10 GUILTY, I AM ASSUMING?

11 THE RESPONDENT: YES, SIR.

12 THE COURT: AND WERE SENTENCED TO A 120 MONTHS  
13 SENTENCE?

14 THE RESPONDENT: CORRECT, SIR.

15 THE COURT: AND YOU DID YOUR SENTENCE AT  
16 VARIOUS FACILITIES?

17 THE RESPONDENT: NO, SIR. AT FMC-DEVINS IN  
18 MASSACHUSETTS.

19 THE COURT: SO YOU WERE AT DEVENS THE ENTIRE  
20 TIME?

21 THE RESPONDENT: CORRECT.

22 THE COURT: WERE YOU IN TREATMENT THERE?

23 THE RESPONDENT: NO, SIR.

24 THE COURT: YOU WERE JUST THERE?

25 THE RESPONDENT: YES, SIR.

1 THE COURT: IN THE GENERAL POPULATION?

2 THE RESPONDENT: YES, SIR.

3 THE COURT: WORKING?

4 THE RESPONDENT: YES, SIR.

5 THE COURT: AND AS -- DID YOU HAVE HISTORY OF  
6 INFRACTIONS?

7 THE RESPONDENT: NO, SIR.

8 THE COURT: AND AS -- YOU WERE CERTIFIED THIS  
9 YEAR, THIS PAST YEAR; CORRECT?

10 THE RESPONDENT: CORRECT, SIR.

11 MR. MCNAMARA: IT WAS JUNE 21, I BELIEVE, YOUR  
12 HONOR.

13 THE COURT: OF 2010?

14 THE RESPONDENT: 2010. IF I MAY SAY HERE,  
15 YOUR HONOR, WHAT PUZZLES ME AND MY WIFE ABOUT THE  
16 CERTIFICATION, I WAS FORMERLY TOLD IN DECEMBER 2009 THAT  
17 I WAS CLEARED BY THE ADAM WALSH ACT. I WAS BEING  
18 PROCESSED OUT DURING JUNE TO BE -- BEFORE THE STREET. MY  
19 WIFE HAD BEEN IN TOUCH WITH SENATOR WEBB WITH RESPECT TO  
20 HAVING MY CASE TRANSFERRED FROM CALIFORNIA TO WHERE SHE  
21 LIVED IN NORFOLK. SHE WAS IN TOUCH WITH SENATOR WEBB,  
22 WHO WAS ASSISTING IN THIS.

23 SHE ALSO -- SENATOR WEBB RECEIVED A LETTER  
24 FROM THE WARDEN OF DEVENS STATING THAT THE BUREAU OF  
25 PRISONS HAD NO OBJECTION TO THE CASE BEING TRANSFERRED,

1        THAT I WOULD BE RELEASED TO THE STREET JUNE 22. MY WIFE  
2        WAS INFORMED THAT -- I MEAN, I WASN'T INFORMED OF MY  
3        AMERICAN FLIGHT NUMBER. MY WIFE WAS INFORMED BY THE  
4        SECRETARY OF PRISON THAT SHE COULD EITHER FLY WITH ME OUT  
5        TO CALIFORNIA OR MEET ME THERE.

6                MY WIFE THEN MADE RESERVATIONS AT A MOTEL,  
7        PURCHASED A TICKET TO MEET ME THERE. ALL OF THIS, I WAS  
8        BEING PROCESSED TO THE STREET FOR RELEASE. AND THEN,  
9        SIR, ON WEDNESDAY, JUNE 9, I WAS INFORMED AT NOON TO PACK  
10       UP. I HAD NO KNOWLEDGE OF THIS, NO NOTHING. I KNEW  
11       NOTHING ABOUT IT. JUNE -- AT 3:30 IN THE MORNING, I WAS  
12       SHACKLED, HANDCUFFED, AND LITERALLY THROWN IN THE BACK OF  
13       THE CAR AND DRIVEN NON-STOP TO BUTNER, WHICH IS UNHEARD  
14       OF TO MY KNOWLEDGE IN THE B.O.P.

15               THE COURT: FROM WHERE? FROM DEVENS?

16               THE RESPONDENT: FROM DEVENS, DIRECT, NON-STOP  
17       IN THE BACK OF THE CAR TO BUTNER.

18               AT BUTNER, I WAS NOT TOLD ANYTHING OF WHAT  
19       HAPPENED. THE FOLLOWING THURSDAY, FIVE DAYS BEFORE THE  
20       TUESDAY OF MY RELEASE, A PSYCHOLOGIST SIMPLY INFORMED ME  
21       YOU ARE GOING TO BE CERTIFIED, WE WERE SUPPOSED TO SEE  
22       YOU MONDAY, I WAS BUSY, I COULDN'T REACH YOU UNTIL TODAY,  
23       I HAVE ONLY TOMORROW TO GET THE PAPERS READY BECAUSE THEY  
24       HAVE TO BE IN WASHINGTON ON MONDAY BECAUSE TUESDAY IS  
25       YOUR RELEASE DATE. THAT WAS IT. NO QUESTIONS, NO

1       NOTHING.    I WAS JUST INFORMED OF THEN.

2                   THEN ON THE MONDAY -- I AM SORRY, YOUR  
3       HONOR -- ON THE TUESDAY, JUNE 22, I WAS HANDED MY  
4       CERTIFICATION PAPERS THAT HAD BEEN PROCESSED ON MONDAY,  
5       THE 21ST, AND THAT IS WHEN THE CERTIFICATION STARTED.  
6       AND I WAS UNABLE TO COMMUNICATE WITH MY WIFE.   SHE WAS  
7       FRANTIC, OF COURSE, WONDERING WHAT HAPPENED.   I WAS  
8       WONDERING WHAT HAPPENED.

9                   THERE WAS NO FOREWARNING OF THIS.   NOTHING.  
10       JUST (RESPONDENT SNAPS FINGERS)   YOU ARE GOING TO BE  
11       RELEASED TO THE STREET, AND THEN NOW I AM DOWN AT BUTNER,  
12       SIR.

13                   THE COURT:   DO YOU HAVE A TERM OF SUPERVISED  
14       RELEASE?

15                   THE RESPONDENT:   THREE YEARS, SIR.

16                   THE COURT:   OUT OF THE DISTRICT IN CALIFORNIA?

17                   THE RESPONDENT:   YES, SIR.   AND THIS IS WHAT  
18       MY WIFE AND SENATOR WEBB WAS TRYING TO GET TRANSFERRED TO  
19       VIRGINIA AT THE TIME OF THE CERTIFICATION THAT I WAS  
20       PULLED FROM DEVENS TO BUTNER.

21                   NOW, I WOULD LIKE TO SAY, IF I MAY, THAT TWO  
22       DAYS AGO, WE WERE TAKEN FROM BUTNER AND PLACED IN COUNTY  
23       JAIL, AND THE FIRST NIGHT WE SLEPT ON THE FLOOR.   LAST  
24       NIGHT WE WERE AWOKEN AT 3:30 IN THE MORNING TO BE BROUGHT  
25       TO COURT.

1           NOW, I SERVED MY SENTENCE, YOUR HONOR, AND I  
2           CERTAINLY PAID MY DEBT TO SOCIETY. I ADMITTED TO MY  
3           GUILT. I COOPERATED WITH THE AUTHORITIES. I HAVE A  
4           CLEAN PRISON RECORD, A CLEAN WORK RECORD. AND YET FOR  
5           THE LAST SEVEN MONTHS, I HAVE BEEN INCARCERATED IN THE  
6           MARYLAND UNIT WITH LESS FREEDOMS AND/OR MORE PUNITIVE  
7           ENVIRONMENT THAN EXISTED IN DEVENS OR EXISTED IN THE  
8           GENERAL POPULATION AT BUTNER.

9           NOW, IF THIS IS AMERICAN JUSTICE, YOUR HONOR,  
10          THEN I WOULD SUBMIT THAT JUSTICE IS ON ITS DEATH BED. IF  
11          THIS IS AMERICAN JUSTICE, I WOULD SUBMIT THAT JUSTICE HAS  
12          BEEN DENIED.

13          YOUR HONOR, THERE ARE LESS -- THERE ARE JUST  
14          UNDER 90 OTHER CIVIL DETAINEES, AS THEY CALL US, AT  
15          MARYLAND UNIT, BUT WE ARE BEING TREATED WITH GREATER  
16          PUNITIVE MEASURES AND RESTRICTIONS THAN FEDERAL INMATES  
17          UNDER THE GUISE OF CIVIL DETAINEES, WHATEVER THAT MEANS.

18          THE -- THERE ARE PEOPLE THERE WHO HAVE BEEN --  
19          THERE ARE PEOPLE AT MARYLAND UNIT THAT HAVE BEEN THERE  
20          FIVE YEARS, FIVE YEARS AS A CIVIL DETAINEE, WITH  
21          ABSOLUTELY NOTHING HAPPENING.

22          A GENTLEMAN A COUPLE OF WEEKS AGO WAS RELEASED  
23          FROM MARYLAND UNIT. HE HAD BEEN THERE FOR JUST UNDER  
24          FOUR YEARS. AND SUDDENLY ONE DAY HE IS TOLD PACK UP, HE  
25          IS LEAVING. WHAT HAPPENED IS PROSECUTION HAD LOOKED AT

1 HIS DISCOVERY. THEY HAD LOOKED AT HIS CHARGES. THEY HAD  
2 LOOKED AT CERTIFICATION, AND THEY SAID THIS IS NOT GOING  
3 TO FLY, GET THAT MAN OUT OF HERE.

4 NOW, THAT MAN SPENT JUST UNDER FOUR YEARS AT  
5 MARYLAND UNIT DEPRIVED OF HIS LIBERTIES, AND THEN  
6 SUDDENLY PROSECUTION OF THE GOVERNMENT, WHOEVER DECIDES  
7 IF THEY SINK OR FLY, AND SENDS HIM BACK TO ALASKA.

8 NOW, AGAIN, YOUR HONOR, HOW CAN ANYONE SAY  
9 THAT THIS HAS ANY MEANING AND JUSTICE? OKAY. IT'S NOT A  
10 CRIMINAL CASE. IT'S A CIVIL CASE. IF I HAD MURDERED  
11 SOMEBODY, MY CASE WOULD HAVE BEEN DEALT WITH BY NOW. I  
12 HAVEN'T DONE A THING NOR HAVE THOSE PEOPLE THERE  
13 FOLLOWING SERVING THEIR SERVICES, PAYING THE DEBT THAT  
14 WAS PRESCRIBED BY THE COURT. WE HAVE ALL DONE THAT.  
15 EVERYONE AT MARYLAND UNIT HAS OFFICIALLY PAID OUR DEBT AS  
16 WE EITHER AGREED, OR MOST OF US IN A PLEA AGREEMENT,  
17 MAYBE A COUPLE IN TRIAL, I DON'T KNOW.

18 AND THE RESULT OF IT IS WE ARE STILL  
19 INCARCERATED. I AM LUCKY. I HAVE ONLY BEEN THERE SEVEN  
20 MONTHS. THERE ARE PEOPLE THERE THAT HAVE BEEN THERE FOR  
21 FIVE YEARS. I DON'T KNOW HOW THEY SURVIVED IT. AND AS I  
22 SAY, YOUR HONOR -- AND THEN I WILL BE QUIET -- THE  
23 CONDITIONS THAT WE LIVE UNDER ARE MORE PUNITIVE AND  
24 RESTRICTIVE THAN THE GENERAL POPULATION.

25 AND IF WE ARE SUPPOSED TO BE CIVILLY DETAINED

1 OR CIVIL DETAINEES, WHY ARE WE IN HANDCUFFS AND SHACKLES  
2 AND PRISON UNIFORMS WHEN WE ARE SUPPOSED TO HAVE OUR  
3 FREEDOM, SIR? THANK YOU FOR HEARING ME OUT, SIR.

4 THE COURT: HAVE YOU READ THE DISTRICT COURT'S  
5 TIMMS OPINION?

6 THE RESPONDENT: I AM SORRY, SIR?

7 THE COURT: HAVE YOU READ THIS DISTRICT  
8 COURT'S OPINION IN TIMMS?

9 THE RESPONDENT: YES, SIR.

10 THE COURT: IT SAYS EVERYTHING YOU JUST SAID.

11 THE RESPONDENT: AND YET WE STILL HAVE THIS  
12 SITUATION, SIR.

13 THE COURT: IT WAS REVERSED.

14 THE RESPONDENT: THE PROBLEM IS WE ARE ALL  
15 STILL DETAINED. WE ARE ALL STILL -- NOTHING HAS  
16 HAPPENED. WE ARE STILL LOCKED UP. WE STILL ARE IN THIS  
17 MORASS WONDERING WHAT TO DO.

18 THE COURT: I KNOW THAT. I MEAN, YOU ARE  
19 PREACHING TO THE CHOIR.

20 THE RESPONDENT: YES, SIR.

21 THE COURT: HAVE YOU READ ANY OF THE OPINIONS  
22 THAT HAVE COME FROM THIS COURT?

23 THE RESPONDENT: I HAVE READ THE TIMMS REPORT.

24 THE COURT: DID YOU READ THE BRONCHEAU  
25 OPINION?

1 THE RESPONDENT: YES, SIR. I UNDERSTAND THAT,  
2 SIR.

3 THE COURT: AND OF COURSE YOU READ COMSTOCK  
4 FROM THE SUPREME COURT?

5 THE RESPONDENT: THAT I HAVEN'T READ, SIR.

6 THE COURT: WELL, THAT IS WHERE IT ALL BEGINS.  
7 THE POLICY, SMALL 'P', IS TO PUSH DOWN FROM THE SUPREME  
8 COURT. I MEAN, THIS IS -- I UNDERSTAND WHAT YOU ARE  
9 SAYING.

10 THE RESPONDENT: SO ONE HAS TO ASK HIMSELF  
11 WITH RESPECT, SIR, WHERE IS THE JUSTICE IN THIS? IS THE  
12 JUSTICE MERELY IN THE PROCEDURE?

13 THE COURT: WELL, THE IMPLICATION IS THAT  
14 YOU ARE MENTALLY SUFFERING FROM A MAJOR MENTAL DISORDER  
15 AS IF YOU WERE INSANE.

16 THE RESPONDENT: YES, SIR.

17 THE COURT: AND THAT'S -- IF YOU ARE NOT, THEN  
18 NONE OF THE CARDS IN THE HOUSE OF CARDS STAND.

19 THE RESPONDENT: YES, SIR. BUT THEN AFTER  
20 EIGHT AND A HALF YEARS AT DEVENS OR EIGHT AND  
21 THREE-QUARTERS YEARS AT DEVENS WITH NO PSYCHOLOGICAL  
22 TESTING, NO TREATMENT, AND THEN, IF I MAY, SIR --

23 THE COURT: AND THEN LET ME TELL YOU THAT  
24 BECAUSE OF THE STIGMA OF YOUR ACCUSATIONS, NO CIVIL  
25 LIBERTARIAN, NO ACLU, NO LIBERAL OUTREACH GROUP, NO ONE

1 WILL GET NEAR YOU. THERE ISN'T THE FIRST CIVIL RIGHTS  
2 ADVOCATE WHO HAS EVER COME CLOSE TO A CHAMPIONING OR  
3 DEFENDING THE CONSTITUTION ON THIS ISSUE.

4 THE RESPONDENT: ABSOLUTELY. AND I UNDERSTAND  
5 THAT.

6 THE COURT: IT'S -- THE HYPOCRISY IS  
7 DEAFENING.

8 THE RESPONDENT: YES, SIR. THANK YOU FOR  
9 THAT, SIR.

10 THE COURT: AND IF YOU WENT TO CONGRESS AND  
11 DID IS A SURVEY OF THE MOST CONSERVATIVE MEMBER AND THE  
12 MOST RADICAL LEFT WING MEMBER, THEY WOULD BOTH BE FOR  
13 THIS LAW.

14 THE RESPONDENT: YES, SIR.

15 THE COURT: AND SO IT'S A DARK HOLE IN  
16 AMERICAN JUSTICE.

17 THE RESPONDENT: THANK YOU FOR THAT, SIR.

18 THE COURT: I AM NOT HERE TO VINDICATE YOU. I  
19 AM HERE TO VINDICATE THE LAW.

20 THE RESPONDENT: THE SYSTEM, THE LAW; YES,  
21 SIR.

22 THE COURT: I HAVE NO AGENDA VIS-A-VIS YOU OR  
23 ANYONE ELSE WHO IS ACCUSED.

24 SO WHERE DO YOU GO FROM HERE?

25 THE RESPONDENT: THAT'S A VERY GOOD QUESTION,

1 SIR. ALL WE CAN DO, ALL I CAN DO PERSONALLY, AS I  
2 SUPPOSE THE OTHER CIVIL DETAINEES, IS WORK WITH THE  
3 ATTORNEYS. I MEAN, WE ARE SUBJECT TO THE SYSTEM. THERE  
4 IS NOTHING MORE THAT WE CAN DO OTHER THAN ABIDE BY WHAT  
5 ATTORNEYS AND THE COUNSEL AND THE COURTS ARE ABLE OR  
6 UNABLE TO DO WITH RESPECT TO OUR SITUATION.

7 I MEAN, IT FALLS WITHIN THE PROVINCE OF THE  
8 JUDICIAL SYSTEM WE HAVE TO WORK AND LIVE AND ABIDE BY.

9 THE COURT: HAVE YOU ATTEMPTED TO WORK YOUR  
10 PARTICULAR CASE OUT THROUGH AGREEING WITH THERAPY AND  
11 BEING RECOVERED?

12 THE RESPONDENT: I DON'T -- I SUBMIT TO THE  
13 COURT THAT I DO NOT NEED THAT THERAPY AND I WOULD BE  
14 CERTAINLY WILLING TO HAVE ANY PSYCHIATRIST IN THE COUNTRY  
15 ATTEST TO THAT.

16 THE COURT: BECAUSE THERE IS A REAL CHANCE --  
17 AND I HATE TO BE A LEGAL CYNIC -- THERE IS A REAL CHANCE  
18 THAT THE HIGHER COURTS, BECAUSE OF POLICY, WILL NEVER  
19 RULE FOR A DETAINEE, EITHER ON THE MERITS OR ON  
20 PROCEDURE.

21 YOU HAVE A SUPREME COURT COLLECTION THAT  
22 CROSSES OVER IDEOLOGICAL LINES, SO THERE IS NO WAY OUT.  
23 DO YOU FOLLOW ME?

24 THE RESPONDENT: YES, I DO, SIR.

25 THE COURT: I MEAN, APPARENTLY THE WAY OUT IS

1 TO GIVE UP AND TO JUST GO ALONG AND HOPE THAT IN A COUPLE  
2 OF MONTHS THEY SAY, WELL, WE DON'T NEED TO MESS WITH YOU  
3 ANYMORE, GET OUT OF HERE.

4 THE RESPONDENT: WITH RESPECT, SIR, THE  
5 TREATMENT PROGRAM, THE S.O.T. TREATMENT PROGRAM THAT THEY  
6 OFFER AT THE MARYLAND UNIT, THERE ARE ONLY THREE INMATES  
7 IN IT, THREE COMMITTED INMATES IN IT. TWO OF THEM HAVE  
8 BEEN IN IT FOR A GOOD FEW YEARS. THEY ARE GETTING  
9 NOWHERE WITHIN THAT PROGRAM. IT'S SUPPOSED TO BE A  
10 FIVE-STEP PROGRAM AND THIS WAS DISCUSSED IN THE COURTS OF  
11 MASSACHUSETTS RECENTLY WITH ONE OF THE CIVILLY COMMITTED,  
12 SHEILDS IS HIS NAME, AND THERE IS NO FIFTH STEP IN THE  
13 PROGRAM YET. AND THE FIFTH STEP IS THE EXIT STEP.

14 AND HERNANDEZ, WHO IN CHARGE OF THE PROGRAM,  
15 HAS SAID WE DON'T HAVE A FIFTH STEP YET. WE HAVE NO WAY  
16 OF RELEASING THESE GENTLEMEN, THE THREE THAT HE HAS, TO  
17 THE OUTSIDE, AND THE COURT HAS SAID UNTIL SUCH TIME AS A  
18 FIFTH STEP IS STRUCTURED AND PUT TOGETHER, THERE IS NO  
19 QUESTION OF RELEASE.

20 SO EVEN IF ONE IS IN THE TREATMENT PROGRAM, I  
21 SUBMIT, SIR, AS IT EXISTS AT MARYLAND UNIT UNDER S.O.P.,  
22 THOSE INMATES STILL ARE NO CLOSER REALLY TO GETTING OUT  
23 THAN WE ARE. THEY ARE HUNG UP ON THIS THING.

24 THE COURT: IT'S A PERFECT CATCH-22.

25 THE RESPONDENT: YES, SIR. THANK YOU, SIR.

1 THE COURT: YOU HAVE TO PARTICIPATE IN THE  
2 TREATMENT IN ORDER TO RECOVER, AND THE TREATMENT HAS NO  
3 CONCLUSION.

4 THE RESPONDENT: CORRECT, SIR.

5 THE COURT: WHAT ARE YOU GOING TO DO, MR.  
6 MCNAMARA?

7 MR. MCNAMARA: WELL, I THINK MR. EBEL NEEDS TO  
8 HAVE A HEARING AS SOON AS POSSIBLE.

9 THE COURT: HEARING ON WHAT?

10 MR. MCNAMARA: PARDON ME?

11 THE COURT: HEARING ON WHAT?

12 MR. MCNAMARA: HEARING ON THE ISSUE AT HAND.

13 THE COURT: ON HIS -- ON THE MERITS?

14 MR. MCNAMARA: ON THE MERITS, I WOULD THINK,  
15 BUT HIS PROBLEM IS HE IS NUMBER 90 ON THE CERTIFICATION  
16 LIST, AND I UNDERSTAND THE COURT IS GOING TO TAKE THEM  
17 FROM NUMBER ONE AS COMSTOCK AND --

18 THE COURT: WHAT COURT? NOT ME.

19 MR. MCNAMARA: WELL, I KNOW THERE IS -- JUDGE  
20 GATES IS WORKING ON AN ORDER NOW --

21 THE COURT: BUT HE IS NOT WORKING FOR ME.

22 MR. MCNAMARA: NO, I KNOW THAT, BUT HE IS  
23 GOING TO TAKE ALL OF THOSE WHO HAVE NOT REQUESTED A  
24 HEARING TO DATE AND HYPOTHETICALLY SAY --

25 THE COURT: WELL, HIS GOOD LUCK IS HE HAS GOT

1 ME AS HIS JUDGE, SO HE IS NOT IN THE LOOP WITH ALL THE  
2 OTHERS.

3 MR. MCNAMARA: RIGHT.

4 THE COURT: I WILL TAKE THEM AS THEY ARE  
5 READY.

6 MR. MCNAMARA: OKAY. AND YOU KNOW, AS YOU CAN  
7 TELL, HE IS A VERY INTELLIGENT MAN, VERY ARTICULATE.

8 THE COURT: WELL, THAT CUTS BOTH WAYS THOUGH.

9 MR. MCNAMARA: WELL, IT DOES.

10 THE COURT: SOMEONE WHO IS HIGHLY INTELLIGENT  
11 COULD BE MORE CAPABLE OF MANIPULATION THAN SOMEBODY WHO  
12 IS FAIRLY SIMPLE.

13 MR. MCNAMARA: THAT IS TRUE.

14 THE COURT: I AM NOT ACCUSING HIM OF THAT.  
15 IT'S JUST -- YOU KNOW, ALL DIFFERENT FACETS UP HERE.

16 MR. MCNAMARA: ONE THING IN MR. EBEL'S CASE,  
17 IF YOU LOOK BACK AT WHAT HAPPENED PRIOR TO THE CONVICTION  
18 HE WENT TO PRISON FOR, HE HAD ONE SEXUAL ASSAULT THAT HE  
19 GOT PROBATION FOR THAT HAPPENED IN THE UNITED KINGDOM.  
20 HE WAS LIVING IN GREAT BRITAIN AT THE TIME AND THAT'S ALL  
21 HE HAS ON HIS PRIOR RECORD.

22 THE COURT: SO HE HAS GOT NO PROCEDURAL  
23 IMPEDIMENTS TO HIS CASE MOVING FORWARD. HE IS NOT TRYING  
24 TO DISMISS IT.

25 MR. MCNAMARA: NO. NO, WE HAVEN'T. WELL,

1       THERE IS A MOTION PENDING, YES.  WE HAVE ASKED THE COURT  
2       TO RELEASE HIM TO HIS SUPERVISED RELEASE TERM.

3               THE COURT:  WELL, IF I DO THAT, THAT IS GOING  
4       TO PUT HIM IN THE COURT OF APPEALS.

5               MR. MCNAMARA:  CORRECT.  YES.  I HAVE TOLD HIM  
6       THAT, BUT IT'S -- YOU KNOW, IT'S A SHOCK.  THAT IS  
7       LEGALLY ABOUT THE ONLY WAY WE CAN CHALLENGE IT PRIOR TO A  
8       HEARING ON THE MERITS.  BUT --

9               THE COURT:  HE WANTS TO BE PUT IN THE  
10       BRONCHEAU COLLECTION.

11              MR. MCNAMARA:  WELL, I DON'T KNOW THAT HE  
12       REALLY WANTS IT.  WE ARE TAKING ADVANTAGE OF IT BECAUSE  
13       IT'S A POSSIBILITY.  I MEAN, IT'S CLEAN.  HE DOESN'T HAVE  
14       ANY IMPEDIMENT OTHER THAN GOING ON SUPERVISED RELEASE,  
15       BUT THEN HE GETS IN THE BRONCHEAU COLLECTION, AS YOU SAY.

16              BUT THE ONLY THING, WE ARE PURSUING THAT  
17       BECAUSE NUMBER 90 ON THE CERTIFICATION LIST, WE THOUGHT  
18       IT WOULD BE AWHILE IF THAT IS ACTUALLY FOLLOWED.

19              THE COURT:  WELL, HE IS NOT NUMBER 90 ON MY  
20       CERTIFICATION LIST.  I HAVE 23 OR SO CASES, AND I AM NOT  
21       PREPARED TO SAY OR TO COMMIT THAT THE OLDEST IS THE  
22       FIRST.

23              MR. MCNAMARA:  WELL, I DIDN'T KNOW, SO THAT IS  
24       WHY I AM JUST ASSUMING HE MIGHT BE THE LAST ON YOUR LIST,  
25       BUT I UNDERSTAND WHAT YOU SAY.

1 SO I HAVE BEEN TELLING HIM --

2 THE COURT: I AM GOING TO TAKE INTO ACCOUNT  
3 THE RELATIVE MERITS AND I AM NOT GOING TO TAKE THE MOST  
4 DIFFICULT AND LEAST LIKELY CASE TO HAVE A DIFFERENT  
5 OUTCOME AND DO THAT FIRST JUST FOR THE SAKE OF DOING IT.

6 MR. MCNAMARA: YES. WELL, THAT IS GOOD. THAT  
7 WOULD HELP.

8 IF I COULD MENTION ONE OTHER THING THAT IS  
9 REALLY PLAGUING MR. EBEL AND ME. HE HAS A SWOLLEN LEFT  
10 LEG, AND IT IS -- I HAVE SEEN IT -- IT'S A LOT LARGER  
11 THAN HIS OTHER LEG, AND HE HAS DIFFICULTY WALKING, AND HE  
12 IS JUST NOT GETTING THE MEDICAL ATTENTION THERE AT BUTNER  
13 THAT OTHERS HAVE COMPLAINED ABOUT, BUT I SEE HIS MORE  
14 BECAUSE I UNDERSTAND WHAT THE PROBLEM IS.

15 HIS KNEE HURTS HIM SO MUCH HE CAN HARDLY WALK.  
16 HE HAS SEEN A P.A. THERE AND THEY HAVE TOLD HIM IT'S A  
17 LIGAMENT PULL OR SOMETHING LIKE THAT. I DON'T KNOW. I  
18 KNOW, YOU KNOW, YOU PROBABLY CAN'T DO ANYTHING ABOUT IT,  
19 BUT WE THOUGHT WE WOULD COMPLAIN TO SOMEBODY BECAUSE WE  
20 BOTH HAVE BEEN TRYING TO GET THE BUTNER PEOPLE MOVING ON  
21 IT, AND THERE IS NO MOVEMENT.

22 AND I HATED, SINCE HE AND I ARE CLOSE IN AGE,  
23 I THINK, AND I DON'T KNOW IF AN OLDER PERSON RUNS UP INTO  
24 THAT MUCH SWELLING IN HIS LEG, YOU WOULDN'T WANT THAT TO  
25 HAPPEN ELSEWHERE. SO MAYBE I AM TALKING TO THE U.S.

1 ATTORNEY. MAYBE THEY CAN CONVINCE BUTNER TO DO SOME  
2 MEDICAL ATTENTION.

3 THE COURT: WELL, WHAT IS THE STANDARD? IT'S  
4 NOT EIGHTH AMENDMENT. IT'S DUE PROCESS FOR CRUEL AND  
5 UNUSUAL PUNISHMENT. IF HE IS NOT SERVING A SENTENCE,  
6 IT'S NOT THE EIGHTH AMENDMENT.

7 MR. MCNAMARA: IT'S EIGHTH AMENDMENT MAYBE. I  
8 DON'T KNOW. WE MIGHT HAVE TO GO THAT ROUTE, I SUPPOSE.

9 THE COURT: YOU CAN FILE A 2241 AND ASK FOR AN  
10 INJUNCTION.

11 MR. MCNAMARA: I GUESS WE COULD DO THAT.  
12 MAYBE JUST BY TALKING ABOUT IT, SOMEBODY WILL GET MOVING  
13 ON IT.

14 THE COURT: THAT IS DOUBTFUL.

15 MR. MCNAMARA: I HAVE WRITTEN LETTERS AND  
16 TALKED TO THEM, BUT NOTHING HAS HAPPENED. I JUST WANTED  
17 TO MENTION THAT, YOUR HONOR.

18 THE COURT: YES. WELL, I AM SURE THAT THE  
19 GOVERNMENT WILL BE RESPONSIVE IF WE CAN BRING IT TO THEIR  
20 ATTENTION.

21 MR. MCNAMARA: ALL RIGHT. THANK YOU.

22 THE COURT: DO YOU HAVE ANY POSITION ABOUT  
23 THIS CASE AND WHAT HAS BEEN SAID?

24 MR. RENFER: ONLY THAT THERE IS THE MOTION TO  
25 DISMISS AND THE ARGUMENTS IN IT ARE BASICALLY TIMMS AND

1 THE BRONCHEAU ARGUMENT, AND HE HAS -- MR. EBEL HAS NOT  
2 MADE A REQUEST FOR HEARING.

3 THE COURT: WAS HE THE LAST PERSON CERTIFIED  
4 OR HAVE PEOPLE BEEN CERTIFIED SINCE THEN?

5 MR. RENFER: THERE HAVE BEEN A FEW OTHERS,  
6 YOUR HONOR. SO HE IS NOT THE LAST. BUT, COUNSEL IS  
7 CORRECT, HE IS DOWN -- HE IS ONE OF THE MORE RECENT ONES.

8 MR. MCNAMARA: HE WAS CERTIFIED IN JUNE OF  
9 THIS YEAR, AND I THINK THEY STOPPED IN JULY. THEN IT WAS  
10 THE LAST ONE THAT I THINK THEY HAVE HAD.

11 THE COURT: WELL, COMSTOCK CAME DOWN IN MAY.

12 MR. MCNAMARA: THAT'S CORRECT. AND IF HE IS  
13 NUMBER 90, I THINK THEY WENT UP TO 100, SO THERE MAY BE  
14 TEN OTHERS.

15 MR. RENFER: I THINK PERHAPS -- I AM NOT SURE  
16 IF -- WAS THIS THE SPREADSHEET THAT I SUBMITTED TO JUDGE  
17 GATES? HE WANTED A SPREADSHEET OF THE --

18 THE CLERK: NO, THAT IS NOT.

19 MR. RENFER: I CAN GET THE INFORMATION ON  
20 WHERE THEY ARE IN THE LINE, YOUR HONOR, IF YOU WANT.

21 THE COURT: IF YOU WOULDN'T MIND SUBMITTING  
22 THAT LATER.

23 MR. RENFER: SURE.

24 THE COURT: THAT WOULD HELP US FOLLOW ALONG.

25 MR. RENFER: SURE. YES.

1 THE COURT: OKAY. IS THAT ALL FOR HIM?

2 MR. RENFER: I MIGHT JUST COMMENT, YOUR HONOR,  
3 MANY MANY TIMES WE HEAR DETAINEES OR INMATES COMPLAINING  
4 ABOUT MEDICAL CARE, AND OF COURSE WE EXPLORE ALL OF THOSE  
5 WHEN THEY COME UP INTO SOME TYPE OF LITIGATION OR  
6 COMPLAINT, BUT I CAN SAY THAT I HAVEN'T LOOKED AT THE  
7 MEDICAL, BUT I HAVE FOUND THAT THE MEDICAL RECORDS ON  
8 THESE ARE VERY EXTENSIVE, AND I AM NOT SURE WHY THEY  
9 HAVEN'T RESPONDED TO YOU, BUT I WOULD BE SURPRISED IF  
10 THERE IS NOT A SUBSTANTIAL MEDICAL RECORD.

11 MR. MCNAMARA: WELL, THIS JUST STARTED A MONTH  
12 AGO.

13 MR. RENFER: OKAY. WELL, THEN MY SUGGESTION  
14 IS ASK FOR TREATMENT, AND IF HE DOESN'T THINK HE IS  
15 GETTING IT, THEN PUT IT IN AN ADMINISTRATIVE COMPLAINT.  
16 THAT IS THE PROCESS.

17 MR. MCNAMARA: WELL, WE HAVE DONE THAT. I  
18 HAVE WRITTEN LETTERS, CALLED, TALKED TO PEOPLE. HE HAS  
19 DONE THE SAME. HE IS JUST NOT GETTING THE TREATMENT THAT  
20 I THINK HE NEEDS.

21 THE RESPONDENT: WITH ALL DUE, YOUR HONOR,  
22 ADMINISTRATION HAS ACCOMPLISHED VERY LITTLE, WITH ALL DUE  
23 RESPECT.

24 THE COURT: WELL, I WOULD ADVISE YOU TO FILE  
25 WHATEVER YOU WANT TO BRING TO MY ATTENTION, FURTHER

1 PROCEEDINGS IN THE CASE, AND WE'LL MOVE IT ALONG.

2 MR. MCNAMARA: I WILL, YOUR HONOR. THANK YOU.

3 THE COURT: OKAY. THANK YOU.

4 MR. MCNAMARA: THANK YOU FOR LISTENING TO US.

5 THE RESPONDENT: THANK YOU, YOUR HONOR.

6 THE COURT: YES.

7 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

8  
9  
10 CERTIFICATE

11  
12 THIS IS TO CERTIFY THAT THE FOREGOING  
13 TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES  
14 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF  
15 THE SHORTHAND NOTES, CONSISTING OF THE WHOLE THEREOF, OF  
16 THE PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND  
17 TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

18 DATED THIS 29TH DAY OF AUGUST, 2011.

19  
20 /S/ SHARON K. KROEGER  
21 COURT REPORTER  
22  
23  
24  
25